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91-91

No. _____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

EUERLE FARMS, INC., et al.,

Petitioners,

v.

FARM CREDIT SERVICES
of St. Paul, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether there is an implied right of action in Farm Credit System (FCS) member/borrowers to enforce (a) mandatory procedural requirements of the Agricultural Credit Act of 1987 and/or (b) rights of first refusal under 12 U.S.C.A. § 2219a and (c) the mandatory procedural requirements of the Agricultural Credit Act of 1985, Public Law 99-205, Title 3, Section 307, otherwise known as the "Grassley Amendment." These provisions require that FCS lenders:

> a) review each loan placed in a nonaccrual status to determine whether such loan should be restructured;
>
> b) give notice of the provisions of Section 307;
>
> c) develop a policy governing forbearance, and a right to review and reconsideration of any decision with respect to forbearance;

d) provide written notice to any borrower with a distressed loan indicating that the loan may be suitable for restructuring;

e) provide notice no later than 45 days beginning any foreclosure with respect to the distressed loan;

f) shall not commence or continue any foreclosure with respect to any distressed loan until after consideration of any application submitted by the borrower for loan restructuring; and

g) grant the right to repurchase the property from Farm Credit Services after foreclosure and the ending of any relevant state redemption period at appraised value.

A direct conflict exists on this question between the Courts of Appeals decisions in this proceeding and Zajac v. Federal Land Bank of St. Paul, 909 F.2d 1181 (8th Cir. 1990), upon which this decision was based, and the decision of the United States District Court for the Western District of North Carolina in Payne v. Federal Land Bank of Columbia, 916 F.2d 179 (4th Cir. 1990).

PARTIES TO THE PROCEEDING

In addition to the respondent named in the caption, other named respondents are Farm Credit Bank of St. Paul, Federal Land Bank Association of Willmar, Federal Land Bank Association of Rochester, Federal Land Bank Association of Marshall, Federal Land Bank Association of Morris, Federal Land Bank Association of Alexandria, Federal Land Bank Association of St. Paul, Federal Land Bank Association of Redwood Falls, Federal Land Bank Association of Mankato, Federal Land Bank Association of Fargo, Federal Land Bank Association of Mandan, Federal Land Bank Association of Minot, Farm Credit Services of West Central Minnesota, Farm Credit Services of Mankato, Production Credit Association of Rochester, Production Credit Association of Minnesota Valley, Production Credit Association of Madison, Production Credit

Association of Fairmont, Production Credit Association of Fargo, and Production Credit Association of Mandan.

In addition to the petitioner named in the caption, the remaining named petitioners are Gerald Euerle, B & P Living Trust, William T. Burgmeier, Rita Burgmeier, TRJ Corporation, T. Ray Johnson, Gerda Johnson, Thomas Johnson, Lisa Johnson, Lee Rose Acres Living Trust, Leander Citrowske, Estate of Rose Mary Citrowske, deceased, A & G Farm Company, Gerald Christenson, Anita Christenson, L & M Living Trust, Leland F. Erickson, Marita M. Erickson, Pacific Living Trust, Marvin Finstrom, Geraldine Finstrom, Dithmarsia Living Trust, Karl H. Peters, Lavonne Peters, Paul E. Kuball, Grace J. Kuball, Duane C. Hanson, Carol A. Hanson, John T. Tersteeg, Elizabeth Tersteeg, G & H Farms, Inc., Earl R. Miller, Marlys E. Miller, L & H

Living Trust, Harold Fenske, Laurel Fenske, Gary Stedman, June Stedman, Merlyn Yagow, Delores Yagow, Pioneer Life Trust, Chester Brakke, Alice Brakke, Western Life Trust, Ronald Brakke, Estate of Jean Brakke, deceased, MV Trust, RD Trust, Walter Sands, Vivian Sands, Roger Sands, Dennis Sands, Sands Brothers, T. J. Borchardt, Delila Borchardt, 3J Living Trust, Joe M. Obrigewitch, Jr., Magdalena Obrigewitch, and Genevieve Obrigewitch.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner Euerle Farms, Inc. and the other petitioners (noted on Page ii) respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered in the above-entitled proceeding on March 18, 1991.

OPINIONS BELOW

The opinion of the Court of Appeals upon which review is sought (App. A, p. 1a) is reported at 928 F.2d 274 (8th Cir. 1991). That ruling held that a private right of action is not available to a farmer, member, borrower of the Farm Credit System to enforce the right of first refusal granted to member/borrowers under 12 U.S.C.A. § 2219a of the Act, P.L. 100-233. The Court also, without

comment, held that a private right of action is not available to the member/borrower to enforce the other provisions of P.L. 100-233 and P.L. 99-205. The Order of the Court of Appeals affirms an Order for Summary Judgment of the District Court for the District of Minnesota. The Court of Appeals, in not commenting on aspects of Petitioners' claims other than those involving the right of first refusal was following its ruling in Zajac v. Federal Land Bank of St. Paul, 909 F.2d 1181 (8th Cir. 1990).

JURISDICTION

The opinion of the Court of Appeals was entered on March 18, 1991 (App. A, p. 1a). The Court's jurisdiction is invoked under 28 U.S.C.A. § 1254(1). Jurisdiction of the District Court was invoked under 28 U.S.C.A. § 1331 and § 1343. Jurisdiction of the Court of

Appeals was invoked under 28 U.S.C.A. § 1292a(1).

STATUTORY PROVISIONS INVOLVED

Appendix C sets out the relevant portions of the Agricultural Credit Act of 1985 with amendments, Public Law No. 99-205 and Agricultural Credit Act of 1987, Public Law No. 100-233, 12 U.S.C.A. § 2001, §2202a, and § 2219a.

STATEMENT OF THE CASE

The Agricultural Credit Act of 1985

The Agricultural Credit Act of 1985, Public Law No. 99-205 and the Agricultural Credit Act of 1987, Public Law No. 100-233 constituted comprehensive change in the way agricultural financing is conducted in the United States. The 1985 Act involved a "bail out" of the Farm Credit System. Various borrower rights were given to member/borrowers in exchange for the loss of "local sovereignty" which had been encapsuled in

the previous Agricultural Credit Acts. The 1985 Act included an amendment by Senator Charles Grassley of Iowa, and referred to as the Grassley Amendments. These amendments are codified as Section 307 of Public Law No. 99-205, Title 3, Section 307. The Grassley Amendment requires the Farm Credit Services to: (1) review each loan that has been placed in nonaccrual status by such institution to determine whether such loan may be restructured based upon changes in the circumstances of such institution as a result of this act and the amendments made by this act; and (2) notify in writing the borrower of each such loan of the provisions of this section. The entirety of 12 U.S.C.A. § 2001, to which the Grassley Amendments are appended, is set out in Appendix C.

In 1987, Congress, finding the 1985 "bail out" to have been partially

unsuccessful, passed the Agricultural Credit Act of 1987. This Act, again, reduced the power of member/borrowers over loan decisions in the Farm Credit Services, and in exchange were given certain guarantees meant to protect their status as lender/borrowers and give them the protection they would previously have had through their input with local boards.

Title 1 of the Act is called "Assistance to Farm Credit System Borrowers," and sets out various loan servicing requirements which the language of the statute makes mandatory upon Farm Credit Service lenders. The most important of these procedures are codified in 12 U.S.C.A. § 2202a, Part C, and relate to the rights of the borrowers to restructure loans. The entirety of 12 U.S.C.A. § 2202a is also set out in Appendix C.

Restructuring is meant to include any sort of modification of the loan terms which would increase the viability of a farmer's operation. These include debt write-down, debt write-off, reappraisal, and forbearance. Farm Credit Service lenders were required to restructure distressed loans if the potential cost to the lender is greater than or equal to the cost of foreclosure.

The language of § 2202a is mandatory. The procedures require the lender to notify the distressed borrower that the loan may be suitable for restructuring, and most important that the lender not foreclose or continue foreclosure proceedings before the lender has completed pending consideration of the loan for restructuring. The Act goes on to set forth in detail the factors Farm Credit Services is to continue, and the form of accounting procedures to be used

in determining the cost of restructuring and the viability of restructuring. It requires Farm Credit Services to restructure the loan in conformity with the alternative which reflects the least cost to the lender. The Farm Credit Administration is given the authority to issue directives requiring compliance with any provision of this section if a qualified lender fails so to comply.

The Farm Credit Services (consisting of, in this case, both the Production Credit Services and the Federal Land Bank) declined to afford these procedures to various of the petitioners, resulting in this litigation. It is necessary to review the ways in which Farm Credit Services was failing to honor the provisions of the two relevant Farm Credit Acts, why Farm Credit Services failed to follow them, and the nature of the change brought about by changing Farm

Credit Services' practices in farm country.

The Petitioners

All Petitioners in this case are farmers from either Minnesota or North Dakota who owned and operated farms upon which either land, or personalty, or both were secured by mortgages and/or security agreements to the Federal Land Bank of St. Paul or various Production Credit Associations, later combined into the Farm Credit Bank of St. Paul. All of the farmers who are petitioners experienced difficulties in making their payments because of the farm crisis of the mid-1980's. All of them were eligible for both forbearance and restructuring. Most of the farmers who are petitioners lost land to one or the other branch of Farm Credit Services; some of the remainder, land was threatened by foreclosure, or

had been foreclosed upon but was still in the redemption period.

Since this case involves one of summary judgment, and since both the Court and the respondents believe that there was nothing in the pleadings or the affidavits submitted by petitioners in response to the motion to dismiss/motion for summary judgment, the allegations in such affidavits and such complaint will be taken as true for the purposes of this section.

The petitioners filed this action on November 22, 1989, shortly after the Three-Judge Panel of the Eighth Circuit issued its decision in Zajac v. Federal Land Bank of St. Paul, 887 F.2d 844 (8th Cir. 1989). Shortly thereafter, respondents brought a motion for dismissal. Since this motion and the opposition to it were accompanied by affidavits, the action came to resemble

one for summary judgment under Rule 56, F.R.C.P. The Court determined to defer ruling on the respondents' motion until the full panel of the Eighth Circuit Court of Appeals could rule on Zajac. On July 31, 1990, the Court of Appeals for the Eighth Circuit reversed the holding of the Three Judge Panel, ruling that there was not a private right of action to enforce the provisions of the Farm Credit Act of 1987. The District Court, believing it was following the mandate of the Eighth Circuit Court of Appeals, dismissed petitioners' complaint, and petitioners appealed to the Eighth Circuit alleging both that the decision in Zajac was erroneous and that the decision in Zajac did not apply to the right of first refusal under 12 U.S.C.A. § 2219a. On March 18, 1991, the Eighth Circuit upheld the ruling of the District Court.

Since the ruling in Zajac, the Court of Appeals for the Fourth Circuit has issued an opinion directly contrary to Zajac in Payne v. Federal Land Bank of Columbia, 916 F.2d 179 (4th Cir. 1990). Although Payne applies only to the borrowers' rights under the right of first refusal (12 U.S.C.A. § 2219a), its analysis necessarily implies that there is a private cause of action to enforce the Farm Credit Act of 1987.

REASONS FOR GRANTING THE PETITION

The holdings of the United States Courts of Appeals for the Eighth and Ninth Circuit in Zajac v. Federal Land Bank of St. Paul, 909 F.2d 1181 (8th Cir. 1990), and Harper v. Federal Land Bank of Spokane, 878 F.2d 1172 (9th Cir. 1989), directly conflict with the holding of the Fourth Circuit in Payne v. Federal Land Bank of Columbia, 916 F.2d 179 (4th Cir. 1990).

The issue is one of great significance to the agricultural credit system. The system has been in existence since 1916. The original concept was that control of agricultural credit should rest with local farmers and neighbors, helping their fellow farmers through difficult times. There are approximately 600,000 member/borrowers, and the system extends a significant portion of the agricultural credit in the nation. The farm crisis which began in the middle 1980's reduced the ability of farmers to pay back loans which had been based upon the inflated land values of the late 1970's. Further, the rapid rise of interest rates in the late 1970's and early 1980's, coupled with the relatively fixed commodity prices received in those years, caused a large number of defaults, and caused the Farm Credit Services to claim (whether correctly or not) that the

system was in danger. Congress offered a "bail out" plan in 1985 and another plan in 1987. Both plans were a compromise between the interests of the borrowers and the interests of the lenders. The lenders, in exchange for two benefits -- an infusion of capital from the government and a centralization of control over loans and member/borrowers -- were expected to protect the member/borrowers' rights in other ways. The most important way in which protection was to be afforded was through legal rights granted to the member/borrower to force the Farm Credit System to forbear from foreclosure or liquidation of the property of member/borrowers with distressed loans, to give a credit review to farmers, and to insure that if the farmer was at all viable, the loan would be restructured so that the member/borrower could survive.

Under previous versions of the Farm Credit Acts, local boards had the right and authority (which they often exercise) to use their funds to directly restructure a farmer. It was felt by the more institutionalized segments of the Farm Credit Services that this placed the ability of the increasingly centralized banking system to control its losses at the mercy of local boards. Farm Credit Services wanted centralization and it received centralization. In return for this, Congress required Farm Credit Services to cooperate with distressed farmers. The practical effect of cases such as Zajac and Harper is that these requirements are enforceable only by grace of the Farm Credit Services.

Since this case was decided on a dismissal, and the Court therefore did not require any answers to petitioners' numerous discovery requests, it is

impossible to determine precisely what internal borrower rights the member/borrowers would have had through Farm Credit Services, or any other branch regulated by the Farm Credit Administration. However, the affidavits and information supplied by the petitioners make clear that there was virtually none, and there was no supported claim made by Farm Credit Services that there were any sorts of effective internal procedures by which borrowers' rights could be enforced.

Because there is a direct conflict between two Courts of Appeal, and the question presented is of enormous national significance, the Petition for Certiorari should be granted under Rule 17 of the Rules of the Supreme Court of the United States, which states as grounds for the granting of such petitions, inter alia:

> (a) when a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter;
>
> ...
>
> (c) when a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this court ....

In addition to the conflict in federal jurisdictions, the conflict in state jurisdictions has been substantial. In Minnesota and North Dakota alone, for example, state courts have differed over whether they have the right, directly or through Farm Credit Services lending contracts, to enforce the provisions of the Farm Credit Services. Minnesota has determined that it is not. Production Credit Association v. VanIperen, 396 N.W.2d 35 (Minn.Ct.App.1986). North Dakota has determined that it has. Federal Land Bank of St. Paul v. Overboe,

404 N.W.2d 445 (N.D. 1987). The current state of the law is therefore highly confused. Different state courts are interpreting and utilizing federal law in different ways. Because Farm Credit Services does not have the status of a federal agency for purposes of immunity from suit, the application of a federal law, and the development of that law, is being left entirely to state courts, except in the Fourth Circuit.

The Conflict is Direct

Although the issues being presented to the United States Supreme Court in this petition include more than the issues decided by the Fourth Circuit in Payne, the conflict between the issue expressly decided by the Eighth Circuit is identical to that decided by the Payne Court. In both cases, the question was whether the Federal District Court could enforce the mandatory rights of first

refusal found in 12 U.S.C.A. § 2219a. Although there is some language in Payne which indicates that it was not directly addressing the Zajac issue, that issue is distinguishable from the issue determined by the Eighth Circuit in Euerle Farms, and that determination is directly contrary to the Payne Court's decision.

It is important to concentrate initially on the narrow issue of the rights of a member/borrower under § 2219a -- the right of first refusal section. Unlike the Zajac/Harper sort of situation where there was a very thin argument that there would be internal procedures within Farm Credit Services or the Farm Credit Administration allowing for enforcement of borrowers' rights under § 2202a, there are no conceivable internal policies or procedures which would allow a farmer to enforce his rights of first refusal. Furthermore, the provisions of § 2219a

are absolutely mandatory. They state, inter alia:

> (b) Application of right of first refusal to sale of property
>
> (1) Election to sell and notification
>
> Within 15 days after an institution of the System first elects to sell acquired real estate, or any portion of such real estate, the institution shall notify the previous owner by certified mail of the owner's right--
>
> (A) to purchase the property at the appraised fair market value of the property, as established by an accredited appraiser; or
>
> (B) to offer to purchase the property at a price less than the appraised value.
>
> ...
>
> (3) Mandatory sale
>
> An institution of the System receiving an offer from the previous owner to purchase the property at the appraised value shall, within 15 days after the receipt of such offer, accept such offer and sell the property to the previous owner.

There is no discretion here whatever, whether in the definition of terms or the application of mathematical formulae, as might be argued in regard to 12 U.S.C.A. § 2202a. Hence, the affect of the Eighth Circuit's decision in this case is simply to announce that the federal government, in dealing with its member/borrowers, is not required to follow its own laws. And this is to deny those member/borrowers, whose assent to the proposed Farm Credit Act was crucial to its passage, the full faith and credit of the United States.

The Private Cause of Action Question

The Supreme Court has established an inquiry for determining the presence of a private right of action. In Cort v. Ash, 422 U.S. 66 (1975) and Thompson v. Thompson, 484 U.S. 174 (1988) the Court set forth a four factor test to determine whether courts should imply a cause of action from the mandatory provisions of a

statute. These include:

> 1) whether there is a special benefit granted to the class protected by the statute;
>
> 2) whether a congressional intent that there be a private right of action may be inferred from the language of the statute;
>
> 3) whether the granting of a private cause of action is consistent with the legislative purpose; and
>
> 4) whether the cause of action is one traditionally relegated to state law.

On all four of these tests, a private cause of action would appear to be required.

The Especial Benefit Test

The Payne Court, in determining that a farmer had a right to undo a foreclosure by Farm Credit Services, noted that the plaintiff was a farmer and former owner who had a right under the statute to submit a bid at an auction and match the winning bid in order to recover his property. As the dissent in Zajac

makes clear, farmer/borrowers were one of the classes with which Congress was centrally concerned:

> By granting farmer-borrowers certain specific rights, the Senate also intended to remedy many of the drastic consequences, caused by the agricultural depression of the 1980s, including the tremendous number of fore-closures forcing farm families out of their homes. (Zajac, at 1189)

It is difficult to see how a Court can overlook the specific language of the statute giving farmer/borrowers the right of first refusal and conclude that they are not given thereby in a special benefit. As the dissent indicated in Zajac, citing Universities Research Association v. Coutu, 450 U.S. 754, 771 (1981), quoting Cannon v. University of Chicago, 441 U.S. 677, 690, n.13 (1979); Miener v. Missouri, 673 F.2d 969, 974, n.4 (8th Cir. 1982), a private cause of action is to be found where the language

of a statute explicitly confers a right directly on the class of persons including the plaintiff.

INTENT OF CONGRESS

The most important issue in all of these cases is congressional intent. The Payne Court, in examining congressional intent, found that the most weight in legislative history should be given to the conference report, and went on to say:

> The conference report indicates that both the House and the amended Senate versions of the legislation would establish a right of first refusal "under which the borrower would have the first option to reacquire the foreclosed property when the FCS institution disposes of it." 100th Cong., 1st Sess., 1987 U.S. Code Cong. & Admin. News 2956, 2971. (Payne at 182)

The essence of Zajac and Harper, of course, is that Congress did not intend to confer a private right of action. The Zajac Court said:

> The conference committee's report stating that the committee deleted the private right of action provision "represents the final statement of the terms agreed to by both houses." Citing Harper, 878 F.2d at 1176. (Zajac at 1182)

It is impossible that the interpretation of the Payne Court and the interpretation of the Zajac Court can be consistent.

The difference in approach can perhaps best be analyzed by looking at the majority and the dissenting opinions in Zajac. In Zajac, the majority held that there was not a private right of action because the conference committee report had deleted a private cause of action section and given farmers various administrative remedies. The minority, in a lengthy and sophisticated opinion, indicates that the legislative history, including the conference report and the debate after the conference report, makes

it crystal clear that a private cause of action was intended:

> In light of the above, there certainly can be no quarrel that Congress viewed the Act as responsive to the needs of farmer-borrowers in ways that earlier Farm Credit Acts were not. Moreover, the Act clearly manifests Congress' intent to provide borrowers with the ability to enforce procedures granted to protect them from unjustified foreclosure. This can only be done by implying a private right of action for borrowers. (Zajac at 1191)

The dissent also directly contradicted the claim that there is an administrative system to protect member/borrower acts. There is simply no evidence of this, and as the dissent pointed out:

> The plain fact, however, is that the FCA is in no position to effectively enforce the borrowers' rights provisions of the 1987 Act. The farm borrowers have no way to invoke the remedial powers of the FCA. There is no procedure for filing charges or complaints. As the Supreme Court noted in Cannon v.

> University of Chicago, 441 U.S. 677 (1979), [The Supreme Court] has never withheld a private remedy where the statute explicitly confers a benefit on a class of persons and where it does not assure those persons the ability to activate and participate in the administrative process contemplated by the statute. Id. at 706 n.41. There is no such assurance here. (Zajac at 1194)

It is to be presumed that Congress does not write its statutes to provide its constituents with eyewash. There are a great deal more member/borrowers than there are loan officers in the Farm Credit System, and to pass an elaborate statutory scheme without any means of enforcing it would, if done by a private organization, constitute a species of fraud. Surely Congress did not intend to do so.

CONSISTENCY WITH LEGISLATIVE PURPOSE

The majority in Zajac, and the majority in Harper, concluded that Congress' principal objective in passing

the 1987 Act was to restore fiscal integrity to the Farm Credit System. There is no doubt that this was one of the aims. But that aim would not have been realizable without protecting member/borrower's rights at the same time, because Farm Credit System was being given greater centralized control over the affairs of the member/borrower precisely as a trade-off for giving member/borrowers greater rights. The two concepts move in lockstep. The old concept of the local board determining which farmers could survive and which could not was being eroded in favor of objective criteria. At the same time, the farmers' rights were being rationalized as well. To recognize one half of the trade-off without recognizing the other is to miss the point of what Congress did. In its absence, there simply would have been no mutuality

between the rights and responsibilities between the Farm Credit Services and the member/borrowers. As the dissent (whose decision was reversed in Zajac) stated:

> Implying a private right of action for borrowers to enforce carefully defined procedures mandated by the language of the Act is also consistent with the additional goal of the 1987 Act to strengthen and stabilize the Farm Credit System. ... Injunctive relief strengthens, rather than weakens, the Farm Credit System by requiring lenders to make a decision based on a thorough review of all factors and procedures deemed important by Congress. Zajac v. Federal Land Bank of St. Paul, 909 F.2d 1181 (8th Cir. 1990), at 1191.

RELATION BETWEEN STATE AND FEDERAL LAW

The last Cort test is whether the cause of action sought is one traditionally relegated to state law. Both Harper and the majority decision in Zajac held that foreclosure is an area traditionally controlled by state law. However, this misses the question of

redemption rights completely, which is purely a creature of federal statute. But the dissent in Zajac makes it clear that: (1) Federal Land Banks were created by Congress in 1916 as instrumentalities of the United States (12 U.S.C. § 2011); (2) the entire Farm Credit System is uniquely federal because it is created by and exists at the pleasure of Congress; (3) the system wide requirements of the Agricultural Credit Act are not only uniquely federal, they are exclusively federal; and (4) the federal rights embodied in the Farm Credit Acts could be given their intended scope only by way of a stay of Court proceedings.

The Payne Court did not even discuss the issue of private cause of action. It was so clear that the action of the Farm Credit Services explicitly violated federal law that the matter did not even warrant discussion. Nevertheless, Payne,

in requiring the defendant to undue its foreclosure and sale, by necessary implication held that federal courts have the power to enforce the provisions of the Farm Credit Act. Thus, the conflict between the Fourth Circuit on the one hand and the Eighth and Ninth Circuits on the other is complete. The Courts have reached irreconcilable conclusions on the most fundamental question imagineable under the Agricultural Credit Acts of 1987 and 1985.

THE QUESTION PRESENTED HERE IS OF GREAT SIGNIFICANCE AND SHOULD BE SETTLED BY THIS COURT

It should be noted that only four of the eleven Circuits have addressed the Zajac issue. The issue is also currently before the Seventh Circuit, and has already been considered by lower courts in other circuits. When a conflict involves an important issue of nationwide importance, the case for review is

strengthened. The importance of this issue is absolutely fundamental.

In addition to conflicts between various federal jurisdictions, the conflicts which have arisen in state courts is considerable. Some state courts refuse to enforce borrower rights as an implied part of the mortgage contract between the farmer and lender, indicating that these rights are exclusively of federal concern. See VanIperen, Supra. Other courts have taken the position that since the rights of a lender by contract require that lender to follow the law as written into the contract, the fact that there is no federal private right of action militates in favor of the finding of a state cause of action. As the Montana Supreme Court said in Meech v. Hillhaven West, Inc., 776 P.2d 488 (Mont. 1989):

> [T]he fact that United States District Courts for the District of Montana deny federal subject matter jurisdiction of tort claims against Production Credit unions ways for finding subject matter jurisdiction in Montana District Courts because Montana's remedy guarantee mandates a form for claims cognizable according to applicable law. (at 492)

To the same effect, see Overboe, Supra.

The fundamental question is whether a lengthy and sophisticated system regulating rights between creditors and borrowers in agricultural credit should be decided uniformly throughout the nation, and by those courts which ordinarily determine the applicability of federal law, or whether federal law is to be made and interpreted in contradictory and piecemeal fashions, with each State Supreme Court sitting as, in effect, a United States Court of Appeals.

Congress clearly intended the provisions of the Farm Credit Act of 1987

to be mandatory through its numerous and detailed requirements, using mandatory language:

- Protection of borrower stock. 12 U.S.C.A. § 2162.
- Disclosure of loan terms. 12 U.S.C.A. § 2199.
- Access to documents. 12 U.S.C.A. § 2200.
- Release of shareholder lists and corporate charters. 12 U.S.C.A. § 2184.
- Protection from foreclosure or demands for additional collateral for borrowers whose loans were current. 12 U.S.C.A. § 2202d.
- The right of first refusal for previous owners to lease or purchase property acquired by means of foreclosure or sale in lieu of foreclosure. 12 U.S.C.A. § 2219a.
- Requirements of shareholder voting on institutional mergers. 12 U.S.C.A. § 2279C-1.
- Affirmative action requirements. 12 U.S.C.A. § 2219c.
- Prohibition on signed ballots. 12 U.S.C.A. § 2208.

In light of this, the essential question is whether such mandatory requirements mean anything. And the

current answer, without Supreme Court review, is even worse than "they do not." The current answer is "It depends upon who you know and where you go."

CONCLUSION

The conflict between the Eighth and Ninth Circuit Courts of Appeals and Harper and Zajac and the approach taken by the Fourth Circuit in Payne, not to speak of the conflicts between various state courts applying federal law either directly or indirectly, could not be greater. The question is of capital importance to the Farm Credit System as a whole, to its farmer/borrowers, and above all to the integrity of a congressionally mandated system which promises its members and the public generally that it will obey its own laws. The Petition for Certiorari should be granted.

Dated: June 12, 1990.

Respectfully submitted,

JOHN E. MACK
Attorney for Petitioners
R & J Building - Box 302
New London, MN 56273
(612) 354-5100
Attorney Reg. #65973

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 90-5485MN

Euerle Farms, Inc., et al.,	*	
Appellants,	*	**Appeal from the United States**
v.	*	**District Court for the District**
Farm Credit Services of St. Paul, et al.,	*	**of Minnesota.**
Appellees.	*	**[PUBLISHED]**

Submitted: March 14, 1991

Filed: March 18, 1991

Before McMILLIAN, FAGG, and MAGILL, Circuit Judges.

PER CURIAM.

Appellants, a large group of individual and corporate farmers, appeal from the district court's dismissal of their suit to force appellees to comply with the Agriculture Credit Act of 1987, 12 U.S.C. §§ 2001 to 2279aa-14 (1988).

In Zajac v. Federal Land Bank, 909 F.2d 1181, 1182-83 (8th Cir. 1990) (en banc), this court held the act does not create a private cause of action. We now reject the appellants' argument that Zajac is limited to section 2202a of the Act. We see no reason to treat individual sections of the Act differently. Because the appellants' federal claims were dismissed, the district court also properly dismissed the pendent state-law claims.

Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Euerle Farms, Inc., et al.,	*	Civil No. 4-89-1035
Plaintiffs,	*	
v.	*	**ORDER**
Farm Credit Services of St. Paul, et al.,	*	
Defendants.	*	

John E. Mack, Esq., R & J Building, Box 302, New London, MN 56273, counsel for plaintiffs.
Steuart H. Thomsen, Esq. and Sutherland, Asbill & Brennan, 1275 Pennsylvania Avenue N.W., Washington, D.C. 20004-2404; Leslie Anderson, Esq. and Dorsey & Whitney, 2200 First Bank Place East, Minneapolis, MN 55402, counsel for defendant Federal Farm Credit Banks Funding Corporation.

A motion to dismiss the Complaint in its entirety having been made by the following listed defendants in this action pursuant to Rule 12(b) of the Federal

Rules of Civil Procedure:

State Bank of Eden Valley

Farm Credit Services of St. Paul

Farm Credit Bank of St. Paul

Federal Land Bank Association of Willmar

Federal Land Bank Association of Red Wood Falls

Federal Land Bank Association of Mankato

Farm Credit Services of Mankato

Production Credit Association of Minnesota Valley

Production Credit Association of Fairmont

Neil Beitelspacher

Donald Matthews

Jan Devries

Larry Buegler

Roger Refling

Neil Olson

Gordon Stock

Doug Swoboda

Mile Vollmer

Bradley Bakker

Mark Brown

Ronald Kopischke

Dean Peterson

Dick Gerhardt

Harold Eichoff

Farm Credit Services of West Central Minnesota

Federal Land Bank Association of Fargo

Federal Land Bank Association of Alexandria

Federal Land Bank Association of Mandan

Federal Land Bank Association of Marshall

Federal Land Bank Association of Rochester

Production Credit Association of Fargo

Production Credit Association of Madison

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Production Credit Association of Rochester

Burgee Amdahl

Leonard Bailey

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Jerry Fast

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Larry Gjermundson

Michael Gutter

Clay Hestadalen

Berdette Howe

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Mark Jongerins

David McCay

Michael Miller

Paul Muehlberg

Michael O'Keefe

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Deino Sather

Harold Simpson

Lee Strom

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Paul Thorpe

Dean Toft

Sylvia Volker

Bob Wingenbach

Robert Zager

Federal Land Bank Association of Minot

Federal Land Bank Association of Morris

Thomas Erdman

Warren Luebke (Lupke)

Donald Meichsner

Donald Olsen

Ross Olson

Roger Rogne

Jerry Simonson (Simenson)

Herbert Thorndahl

Glenn Bessingpas

Paul De Briyn

Dean Hoas

S.P. Hansen

James Hanson

Robert Santjer

Leigh Sitter

Tom Harlow

Harlow Johnson

Ace Brandt

Karen Brandt Offutt

Larry Dahlstrom

Now on considering the pleadings and memoranda submitted in connection with the motion to dismiss, and after hearing counsel for the respective parties, and due deliberation having been had, and the court finding that there is no just reason for delay,

IT IS HEREBY ORDERED THAT:

1. The motion to dismiss is hereby granted;

2. The clerk shall enter judgment forthwith dismissing on the merits and with prejudice all federal claims which were or could have been alleged by the plaintiffs in this action and all state claims without prejudice.

3. There being no just reason for delay, the clerk shall enter final judgment in favor of the moving defendants and against the plaintiffs and each of them;

4. Plaintiffs' motions for preliminary injunction and default judgment are denied.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 23, 1990

David S. Doty, Judge
United States District Court

UNITED STATE DISTRICT COURT

DISTRICT OF MINNESOTA

Euerle Farms, Inc., et al.,	*	**JUDGMENT IN A CIVIL CASE**
Plaintiffs,	*	CASE NUMBER: 4-89 civil 1035
v.	*	
Farm Credit Services of St. Paul,	*	
Defendants.	*	

___ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

S E E A T T A C H M E N T

8-27-90
Dated

Francis E. Dosal
Clerk

/s/ Julie Rustad
(By) Deputy Clerk

Proceedings include events between 8/27/90 and 8/27/90.

4:89cv1035 Euerle Farms, et al v. Farm Cred Serv SP-, et al

8/29/90 95 ORDER (Judge David S. Doty / 8/23/90) The motion of the following defendants' to dismiss is hereby GRANTED: 1. State Bank of Eden Valley, 2. Farm Credit Services of St. Paul, 3. Farm Credit Bank of St. Paul, 4. Federal Land Bank Association of Willmar, 5. Federal Land Bank Association of Red Wood Falls, 6. Federal Land Bank Association of Mankato, 7. Farm Credit Services of Mankato, 8. Production Credit Association of Minnesota Valley, 9. Production Credit Association of Fairmont, 10. Neil Beitelspacher, 11. Donald Matthews, 12. Jan Devries, 13. Larry Buegler, 14. Roger Refling, 15. Neil Olson, 16. Gordon Stock, 17. Doug Swoboda, 18. Mile Vollmer, 19. Bradley Bakker, 20. Mark Brown, 21. Ronald Kopischke, 22. Dean Peterson, 23. Dick Gerhardt, 24. Harold Eichoff, 25. Farm Credit Services of West Central Minnesota, 26. Federal Land Bank Association of Fargo, 27. Federal Land Bank Association of Alexandria, 28. Federal Land Bank Association of Mandan, 29. Federal Land Bank Association of Marshall, 30. Federal Land Bank Association of Rochester,

31. Production Credit Association of Fargo, 32. Production Credit Association of Madison, 33. Production Credit Association of Mandan, 34. Production Credit Association of Rochester, 35. Burgee Amdahl, 36. Leonard Bailey, 37. Kenneth Berg (Bergh), 38. Doyle Casvant, 39. Mike Christenson, 40. Jerry Fast, 41. Don Geiszer (Geiszler), 42. Larry Gjermundson, 43. Michael Gutter, 44. Clay Hestadalen, 45. Berdette Howe, 46. Howard Huebner, 47. Mark Jongerins, 48. David McCay, 49. Michael Miller, 50. Paul Muehlberg, 51. Michael O'Keefe, 52. Gerald Palesh, 53. Bill Peters, 54. Deino Sather, 55. Harold Simpson, 56. Lee Strom, 57. Stuart Ternes, 58. Paul Thorpe, 59. Dean Toft, 60. Sylvia Volker, 61. Bob Wingenbach, 62. Robert Zager, 63. Federal Land Bank Association of Minot, 64. Federal Land Bank Association of Morris, 65. Thomas Erdman, 66. Warren Luebke (Lupke), 67. Donald Meichsner, 68. Donald Olsen, 69. Donald Olson, 70. Roger Rogne, 71. Jerry Simonson (Simenson), 72. Herbert Thorndahl, 73. Glenn Bessingpas, 74. Paul De Briyn, 75. Dean Hoas, 76. S. P. Hansen, 77. James Hanson, 78. Robert Santjer, 79. Leigh Sitter, 80. Tom Harlow, 81. Harlow Johnson, 82. Ace Brandt, 83. Karen Brandt Offutt, 84. Larry Dahlstrom.

Therefore, Judgment is hereby entered dismissing on the merits and with prejudice all federal Claims which were or could have been alleged by the plaintiffs in this action and all state claims without prejudice. In addition, Final Judgment is entered in favor of the moving defendants and against the plaintiffs and each of them. Plaintiffs' motions for preliminary injunction and default Judgment are denied. [4-1] [7-1] [22-1] [24-1] [40-1] [67-1] [73-1] [75-1] [76-1] (copies sent to all counsel from chambers) (jr) [Entry date 8/29/90] [Edit date 8/29/90]

8/27/90 96 JUDGMENT: (same as docket entry #95) (all counsel notified of date judgment was entered) (jr) [Entry date 8/29/90]

Docket as of August 29, 1990 9:47 a.m.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Euerle Farms, Inc., et al.,	*	Civil No. 4-89-1035
Plaintiffs,	*	
v.	*	**AMENDED ORDER**
Farm Credit Services of St. Paul, et al.,	*	
Defendants.	*	

John E. Mack, Esq., R & J Building, Box 302, New London, MN 56273, counsel for plaintiffs.

Steuart H. Thomsen, Esq. and Sutherland, Asbill & Brennan, 1275 Pennsylvania Avenue N.W., Washington, D.C. 20004-2404; Leslie Anderson, Esq. and Dorsey & Whitney, 2200 First Bank Place East, Minneapolis, MN 55402, counsel for defendant Federal Farm Credit Banks Funding Corporation.

A motion to dismiss the Complaint in its entirety having been made by the following listed defendants in this action pursuant to Rule 12(b) of the Federal Rules of Civil Procedure:

State Bank of Eden Valley

Farm Credit Services of St. Paul

Farm Credit Bank of St. Paul

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Dick Gerhardt

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Farm Credit Services of West Central Minnesota

Federal Land Bank Association of Fargo

Federal Land Bank Association of Alexandria

Federal Land Bank Association of Mandan

Federal Land Bank Association of Marshall

Federal Land Bank Association of Rochester

Production Credit Association of Fargo

Production Credit Association of Madison

Production Credit Association of Mandan

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Dean Hoas

S.P. Hansen

James Hanson

Robert Santjer

Leigh Sitter

Tom Harlow

Harlow Johnson

Ace Brandt

Karen Brandt Offutt

Larry Dahlstrom

Now on considering the pleadings and memoranda submitted in connection with the motion to dismiss, and after hearing counsel for the respective parties, and due deliberation having been had, and the court finding that there is no just reason for delay,

IT IS HEREBY ORDERED THAT:

1. The motion to dismiss is hereby granted;

2. The clerk shall enter judgment forthwith dismissing on the merits and with prejudice all federal claims which were or could have been alleged by the plaintiffs in this action and all state claims without prejudice.

3. There being no just reason for delay, the clerk shall enter final judgment in favor of the moving defendants and against the plaintiffs and each of them; and

4. Plaintiffs' motions for preliminary injunction and default judgment are denied.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 11, 1990

David S. Doty, Judge
United States District Court

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Euerle Farms, Inc., et al.,	*	**AMENDED JUDGMENT IN A CIVIL CASE**
Plaintiffs,	*	CASE NUMBER: 4-89- civil 1035
v.	*	
Farm Credit Services of St. Paul,	*	
Defendants.	*	

___ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

S E E A T T A C H M E N T

9-11-90
Dated

Francis E. Dosal
Clerk

/s/ Julie Rustad
(By) Deputy Clerk

Proceedings include events between 8/27/90 and 8/27/90.

4:89cv1035 Euerle Farms, et al v. Farm Cred Serv SP-, et al

ORDER (Judge David S. Doty / 8/23/90) The motion of the following defendants' to dismiss is hereby GRANTED: 1. State Bank of Eden Valley, 2. Farm Credit Services of St. Paul, 3. Farm Credit Bank of St. Paul, 4. Federal Land Bank Association of Willmar, 5. Federal Land Bank Association of Red Wood Falls, 6. Federal Land Bank Association of Mankato, 7. Farm Credit Services of Mankato, 8. Production Credit Association of Minnesota Valley, 9. Production Credit Association of Fairmont, 10. Neil Beitelspacher, 11. Donald Matthews, 12. Jan Devries, 13. Larry Buegler, 14. Roger Refling, 15. Neil Olson, 16. Gordon Stock, 17.Doug Swoboda, 18. Mile Vollmer, 19. Bradley Bakker, 20. Mark Brown, 21. Ronald Kopischke, 22. Dean Peterson, 23. Dick Gerhardt, 24. Harold Eichoff, 25. Farm Credit Services of West Central Minnesota, 26. Federal Land Bank Association of Fargo, 27. Federal Land Bank Association of Alexandria, 28. Federal Land Bank Association of Mandan, 29. Federal Land Bank Association of Marshall, 30. Federal Land Bank

Association of Rochester, 31. Production Credit Association of Fargo, 32. Production Credit Association of Madison, 33. Production Credit Association of Mandan, 34. Production Credit Association of Rochester, 35. Burgee Amdahl, 36. Leonard Bailey, 37. Kenneth Berg (Bergh), 38. Doyle Casvant, 39. Mike Christenson, 40. Jerry Fast, 41. Don Geiszer (Geiszler), 42. Larry Gjermundson, 43. Michael Gutter, 44. Clay Hestadalen, 45. Berdette Howe, 46. Howard Huebner, 47. Mark Jongerins, 48. David McCay, 49. Michael Miller, 50. Paul Muehlberg, 51. Michael O'Keefe, 52. Gerald Palesh, 53. Bill Peters, 54. Deino Sather, 55. Harold Simpson, 56. Lee Strom, 57. Stuart Ternes, 58. Paul Thorpe, 59. Dean Toft, 60. Sylvia Volker, 61. Bob Wingenbach, 62. Robert Zager, 63. Federal Land Bank Association of Minot, 64. Federal Land Bank Association of Morris, 65. Thomas Erdman, 66. Warren Luebke (Lupke), 67. Donald Meichsner, 68. Donald Olsen, 69. Donald Olson, 70. Russell Rogne, 71. Jerry Simonson (Simenson), 72. Herbert Thorndahl, 73. Glenn Bessingpas, 74. Paul De Briyn, 75. Dean Hoas, 76. S. P. Hansen, 77. James Hanson, 78. Robert Santjer, 79. Leigh Sitter, 80. Tom Harlow, 81. Harlow Johnson, 82. Ace

Brandt, 83. Karen Brandt Offutt, 84. Larry Dahlstrom. Therefore, Judgment is hereby entered dismissing on the merits and with prejudice all federal Claims which were or could have been alleged by the plaintiffs in this action all state claims without prejudice. In addition, Final Judgment is entered in favor of the moving defendants and against the plaintiffs and each of them. Plaintiffs' for preliminary injunction and default Judgment are denied. [4-1] [7-1] [22-1] [24-1] [40-1] [67-1] [73-1] [75-1] [76-1] (copies sent to all counsel from chambers) (jr) [Entry date 8/29/90] [Edit date 9/12/90]

APPENDIX C

Agricultural Credit Act of 1985
12 U.S.C.A. § 2001

---

§ 2001. Congressional declaration of policy and objectives

(a) It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this chapter to continue to encourage farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit, and to modernize and improve the authorizations and means for furnishing such credit and credit for housing in rural areas made available through the institutions constituting the Farm Credit System as herein provided.

(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative

soures of credit for borrowers, the cost of funds, including any costs of defeasance under section 2159(b) of this title, the operating costs of the institution, including the costs of any loan loss amortization under section 2256(b) of this title, the cost of servicing loans, the need to retain earnings to protect borrowers' stock, and the volume of net new borrowing. Further, it is declared to be the policy of Congress that Farm Credit System institutions take action in accordance with the Farm Credit Act Amendments of 1986 in such manner that borrowers from the institutions derive the greatest benefit practicable from that Act: Provided, that in no case is any borrower to be charged a rate of interest that is below competitive market rates for similar loans made by private lenders to borrowers of equivalent creditworthiness and access

to alternative credit.

AMENDMENT TO
SECTION 307 of Public Law 99-205,
Title III, Section 307,
99 Stat. 1709

"Each local lending institution of the Farm Credit System established under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) [this chapter] shall--

"(1) review each loan that has been placed in non-accrual status by such institution to determine whether such loan may be restructured based on changes in the circumstances of such institution as the result of this Act and the amendments made by this Act [see Short Title of 1985 Amendment note set out under this section]; and

"(2) notify in writing the borrower of each such loan of the provisions of this section."

Agricultural Credit Act of 1987
12 U.S.C.A. § 2202a

---

§ 2002a. Restructuring distressed loans

(a) Definitions

As used in this part:

(1) Application for restructuring

The term "application for restructuring" means a written request--

(A) from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(B) submitted on the appropriate forms prescribed by the qualified lender; and

(C) accompanied by sufficient financial information and repayment projections, where appropriate, as required by the

qualified lender to support a sound credit decision.

(2) Cost of foreclosure

The term "cost of foreclosure" includes--

(A) the difference between the outstanding balance due on a loan made by a qualified lender and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure,

including attorneys' fees and court costs;

(D) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(E) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(3) Distressed loan

The term "distressed loan" means a loan that the borrower does not have the financial capacity to pay according to its terms and that exhibits one or more of the following characteristics:

(A) The borrower is demonstrating adverse financial

and repayment trends.

(B) The loan is delinquent or past due under the terms of the loan contract.

(C) One or both of the factors listed in subparagraphs (A) and (B), together with inadequate collateralization, present a high probability of loss to the lender.

(4) Foreclosure proceeding

The term "foreclosure proceeding" means--

(A) a foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan; or

(B) the seizing of and realizing on nonreal property collateral, other than collateral subject to a statutory lien arising under subchapter I or II of this

chapter, to effect collection of a nonaccrual or distressed loan.

(5) Loan

The term "loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(6) Qualified lender

The term "qualified lender" means-

(A) a System institution that makes loans (as defined in paragraph (5)) except a bank for cooperatives; and

(B) each bank, institution, corporation, company, union, and

association described in section 2015(b)(1)(B) of this title but only with respect to loans discounted or pledged under section 2015(B)(1) of this title.

(7) Restructure and restructuring

The terms "restructure" and "restructuring" include rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

(b) Notice

(1) In general

On a determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide written

notice to the borrower that the loan may be suitable for restructuring, and include with such notice--

(A) a copy of the policy of the lender established under subsection (g) of this section that governs the treatment of distressed loans; and

(B) all materials necessary to enable the borrower to submit an application for restructuring on the loan.

(2) Notice before foreclosure

Not later than 45 days before any qualified lender begins foreclosure proceedings with respect to a loan outstanding to any borrower, the lender shall notify the borrower that the loan may be suitable for restructuring and that the lender will review any such suitable loan for restructuring, and shall include with

such notice a copy of the policy and the materials described in paragraph (1).

(3) Limitation on foreclosure

No qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this section.

(c) Meetings

On determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide a reasonable opportunity for the borrower thereof to personally meet with a representative of the lender--

(1) to review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring; and

(2) with respect to a loan that is in nonaccrual status, to develop a plan for restructuring the loan if the loan is suitable for restructuring.

(d) Consideration of applications

(1) In general

When a qualified lender receives an application for restructuring from a borrower, the qualified lender shall determine whether or not to restructure the loan, taking into consideration--

(A) whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure;

(B) whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(C) whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(D) whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

(E) in the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a loan that it is necessary to place in nonaccrual status.

(2) Applications not required for restructuring plans

This section shall not prevent a qualified lender from proposing a restructuring plan for an individual borrower in the absence of an application for restructuring from the borrower.

(e) Restructuring

(1) In general

If a qualified lender determines that the potential cost to such qualified lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the qualified lender shall restructure the loan in accordance with the plan.

(2) Computation of cost of restructuring

In determining whether the potential cost to the qualified lender of restructuring a distressed loan is

less than or equal to the potential cost of foreclosure, a qualified lender shall consider all relevant factors, including--

(A) the present value of interest income and principal forgone by the lender in carrying out the restructuring plan;

(B) reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;

(C) whether the borrower has presented a preliminary restructuring plan and cash-flow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur as a result of the proposed

restructuring; and

(D) whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the institution.

(f) Least cost alternative

If two or more restructuring alternatives are available to a qualified lender under this section with respect to a distressed loan, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

(g) Restructuring policy

(1) Establishment

Each bank board of directors shall develop a policy within 60 days after January 6, 1988, that is consistent with this section, to govern the restructuring of distressed loans. Such policy shall constitute the

restructuring policy of each qualified lender within the district.

(2) Contents of policy

The policy established under paragraph (1) shall include an explanation of--

(A) the procedure for submitting an application for restructuring; and

(B) the right of borrowers with distressed loans to seek review by a credit review committee in accordance with section 2202 of this title of a denial of an application for restructuring.

(3) Submission of policy to FCA

Each bank board shall submit the policy of the district governing the treatment of distressed loans under this section to the Farm Credit Administration. Notwithstanding the duty imposed by the preceding

sentence, the other duties imposed by this section shall take effect on January 6, 1988.

(h) Reports

During the 5-year period beginning on January 6, 1988, each qualified lender shall submit semiannual reports to the Farm Credit Administration containing--

(1) the results of the review of distressed loans of the lender; and

(2) the financial effect of loan restructurings and liquidations on the lender.

(i) Compliance

The Farm Credit Administration may issue a directive requiring compliance with any provision of this section to any qualified lender that fails to comply with such provision.

(j) Permitted foreclosures

This section shall not be construed to prevent any qualified lender from

enforcing any contractual provision that allows the lender to foreclose a loan or from taking such other lawful action as the lender deems appropriate, if the lender has reasonable grounds to believe that the loan collateral will be destroyed, dissipated, consumed, concealed, or permanently removed from the State in which the collateral is located.

(k) Application of section

The time limitation precribed in subsection (b)(2) of this section, and the requirements of subsection (3) of this section, shall not apply to a loan that became a distressed loan before January 6, 1988, if the borrower and lender of the loan are in the process of negotiating loan restructuring with respect to the loan.

(l) Assistance in restructuring

Each Farm Credit Bank, on request of any production credit association, may

assist the association in restructuring loans under this section.

Agricultural Credit Act of 1987
12 U.S.C.A. § 2219a

---

§ 2219a. Right of first refusal

(a) General rule

Agricultural real estate that is acquired by an institution of the System as a result of a loan foreclosure or a voluntary conveyance by a borrower (hereinafter in this section referred to as the "previous owner") who, as determined by the institution, does not have the financial resources to avoid foreclosure (hereinafter in this section referred to as "acquired real estate") shall be subject to the right of first refusal of the previous owner to repurchase or lease the property, as provided in this section.

(b) Application of right of first refusal to sale of property

(1) Election to sell and notification

Within 15 days after an institution of the System first elects to sell acquired real estate, or any portion of such real estate, the institution shall notify the previous owner by certified mail of the owner's right--

(A) to purchase the property at the appraised fair market value of the property, as established by an accredited appraiser; or

(B) to offer to purchase the property at a price less than the appraised value.

(2) Eligibility to purchase

To be eligible to purchase the property under paragraph (1), the previous owner must, within 30 days after receiving the notice required by such paragraph, submit an offer to purchase the property.

(3) Mandatory sale

An institution of the System receiving an offer from the previous owner to purchase the property at the appaised value shall, within 15 days after the receipt of such offer, accept such offer and sell the property to the previous owner.

(4) Permissive sale

An institution of the System receiving an offer from the previous owner to purchase the property at a price less than the appraised value may accept such offer and sell the property to the previous owner. Notice shall be provided to the previous owner of the acceptance or rejection of such offer within 15 days after the receipt of such offer.

(5) Rejection of offer of previous owner

(A) Duties of institution

An institution of the System that rejects an offer from the previous owner to purchase the property at a price less than the appraised value may not sell the property to any other person--

(i) at a price equal to, or less than, that offered by the previous owner; or

(ii) on different terms and conditions than those that were extended to the previous owner,

without first affording the previous owner an opportunity to purchase the property at such price or under such terms and conditions.

(B) Notice

Notice of the opportunity in subparagraph (A) shall be provided to the previous owner by certified

mail, and the previous owner shall have 15 days in which to submit an offer to purchase the property at such price or under such terms and conditions.

(c) Application of right of first refusal to leasing of property

(1) Election to lease and notification

Within 15 days after an institution of the System first elects to lease acquired real estate, or any portion of such real estate, the institution shall notify the previous owner by certified mail of the owner's right--

(A) to lease the property at a rate equivalent to the appraised rental value of the property, as established by an accredited appraiser; or

(B) to offer to lease the property at a rate that is less

than the appraised rental value of the property.

(2) Eligibility to lease

To be eligible to lease the property under paragraph (1), the previous owner must, within 15 days after receiving the notice required by such paragraph, submit an offer to lease the property.

(3) Mandatory lease

An institution of the System receiving an offer from the previous owner to lease the property at a rate equivalent to the appraised rental value of the property shall, within 15 days after the receipt of such offer, accept such offer and lease the property to the previous owner unless the institution determines that the previous owner--

(A) does not have the resources available to conduct a successful

farming or ranching operation; or

(B) cannot meet all of the payments, terms, and conditions of such lease.

(4) Permissive lease

An institution of the System receiving an offer from the previous owner to lease the property at a rate that is less than the appraised rental value of the property may accept such offer and lease the property to the previous owner.

(5) Notice to previous owner

An institution of the System receiving an offer from the previous owner to lease the property at a rate less than the appraised rental value of the property shall notify the previous owner of its acceptance or rejection of the offer within 15 days after the receipt of such offer.

(6) Rejection of offer of previous owner

(A) Duties of institution

An institution of the System rejecting an offer from the previous owner to lease the property at a rate less than the appraised rental value of the property may not lease the property to any other person--

(i) at a rate equal to or less than that offered by the previous owner; or

(ii) on different terms and conditions than those that were extended to the previous owner,

without first affording the previous owner an opportunity to lease the property at such rate or under such terms and conditions.

(B) Notice

Notice of the opportunity described in subparagraph (A) shall be given to the previous owner by certified mail, and the previous owner shall have 15 days after the receipt of such notice in which to agree to lease the property at such rate or under such terms and conditions.

(d) Public offerings

(1) Notification of previous owner

If an institution of the System elects to sell or lease acquired property or a portion thereof through a public auction, competititive bidding process, or other similar public offering, the institution shall notify the previous owner, by certified mail, of the availability of the property. Such notice shall contain the minimum amount, if any, required

to qualify a bid as acceptable to the institution and any terms and conditions to which such sale or lease will be subject.

(2) Priority

If two or more qualified bids in the same amount are received by the institution under paragraph (1), such bids are the highest received, and one of the qualified bids is offered by the previous owner, the institution shall accept the offer by the previous owner.

(3) Nondiscrimination

No institution of the System may discriminate against a previous owner in any public auction, competitive bidding process, or other similar public offering of property acquired by the institution from such person.

(3) Term or condition

For the purposes of this section,

financing by a System institution shall not be considered to be a term or condition of a sale of acquired real estate.

(f) Financing

Notwithstanding any other provision of this section, a System institution shall not be required to provide financing to the previous owner in connection with the sale of acquired real estate.

(g) Mailing of notice

Notwithstanding any other provision of this section, each certified mail notice requirement in this section shall be fully satisfied by mailing one certified mail notice to the last known address of the previous owner.

(h) State laws

The rights provided in this section shall not diminish any such right of first refusal under the law of the State in which the property is located.

(i) Applicability

This section shall not apply to a bank for cooperatives.